

AMENDED IN SENATE APRIL 2, 2013

SENATE BILL

No. 405

Introduced by Senator Padilla

February 20, 2013

An act to add Chapter 5.3 (commencing with Section 42280) to Part 3 of Division 30 of, and to repeal Section 42285 of, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 405, as amended, Padilla. Solid waste: single-use carryout bags.

Existing law, until January 1, 2020, requires an operator of a store, as defined, to establish an at-store recycling program that provides to customers the opportunity to return clean plastic carryout bags to that store.

With specified exceptions, this bill, *as of January 1, 2015*, would, ~~as of January 1, 2015~~, prohibit stores that have a specified amount of dollar sales or retail floor space from providing a single-use carryout bag to a customer. The bill would require these stores to meet other specified requirements regarding providing recycled paper bags, compostable bags, or reusable *grocery* bags to customers.

The bill, *on and after July 1, 2016*, would, ~~on and after July 1, 2016~~, additionally impose these prohibitions and requirements on convenience food stores, foodmarts, and certain other specified stores.

The bill would, ~~beginning January 1, 2016~~, require a reusable grocery bag producer to submit to the Department of Resources Recycling and Recovery a biennial certification, including a certification fee established by the department, that certifies that each type of reusable grocery bag that is imported, manufactured, sold, or distributed in the state and provided to a store for sale or distribution meets *bag that a store is*

required to sell on and after July 1, 2016, to meet specified requirements. The bill would require the department to deposit the certification fees into the Reusable Bag Account, which would be established by the bill in the Integrated Waste Management Fund. The bill would require that moneys in the account be expended by the department, upon appropriation by the Legislature, to implement the certification requirements. A violation of these certification requirements that requirement and the requirements that would be imposed upon grocery bag producers to submit certain laboratory test results would be subject to an administrative civil penalty assessed by the department Department of Resources Recycling and Recovery. The department would be required to deposit these penalties into the Penalty Subaccount, Reusable Bag Account, which the bill would create in the Reusable Bag Account be created in the Integrated Waste Management Fund, for expenditure by the department, upon appropriation by the Legislature, to implement the certification those requirements.

The bill would require the department, by January 1, 2017, to submit a report to the Legislature regarding the implementation of the bill's provisions. The bill would repeal this report requirement on January 1, 2018.

The bill would allow a city, county, or city and county, or the state to impose civil penalties for a violation of the bill's requirements, ~~except for the certification requirements~~. The bill would require these civil penalties to be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, and would allow the penalties collected by the Attorney General to be expended by the Attorney General, upon appropriation by the Legislature, to enforce the bill's provisions. *The bill would provide that these remedies are not exclusive, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 5.3 (commencing with Section 42280)
- 2 is added to Part 3 of Division 30 of the Public Resources Code, to
- 3 read:

CHAPTER 5.3. SINGLE-USE CARRYOUT BAGS

Article 1. Definitions

42280. For purposes of this chapter, the following definitions shall apply:

(a) “Department” means the Department of Resources Recycling and Recovery.

(b) “Postconsumer recycled material” means a material that would otherwise be destined for solid waste disposal, having completed its intended end use and product life cycle. Postconsumer recycled material does not include materials and byproducts generated from, and commonly reused within, an original manufacturing and fabrication process.

(c) “Recycled paper bag” means a paper carryout bag provided by a store to a customer at the point of sale that meets all of the following requirements:

(1) (A) Except as provided in subparagraph (B), ~~the paper carryout bag~~ contains a minimum of 40 percent postconsumer recycled materials.

(B) An eight pound or smaller recycled paper bag shall contain a minimum of 20 percent postconsumer recycled material.

(2) Is accepted for recycling in curbside programs in a majority of households that have access to curbside recycling programs in the state.

~~(3) Is capable of composting, consistent with the timeline and specifications of the American Society of Testing and Materials (ASTM) Standard Specification for Compostable Plastics D6400.~~

~~(4)~~

(3) Has printed on the bag the name of the manufacturer, the ~~location (country)~~ country where the bag was manufactured, and the minimum percentage of postconsumer content.

~~(d) (1) “Reusable grocery bag” on or before June 30, 2016, means either of the following:~~

~~(A) A bag made of cloth or other machine washable fabric that has handles.~~

~~(B) A durable plastic bag with handles that is at least 2.25 mils thick and specifically designed for multiple reuses.~~

~~(2)~~

(d) “Reusable grocery bag” on and after July 1, 2016, means a bag that meets the requirements of Section ~~42283~~ 42281.

(e) “Reusable grocery bag producer” means a person or entity that does any of the following:

(1) Manufactures reusable grocery bags for sale or distribution to a store.

(2) Imports reusable grocery bags into this state, for sale or distribution to a store.

(3) Sells or distributes reusable bags to a store.

(f) (1) “Single-use carryout bag” means a bag made of plastic, paper, or other material; that is provided by a store to a customer at the point of sale and that is not *a recycled paper bag or a reusable grocery bag* that meets the requirements of Section ~~42283~~, ~~on and after July 1, 2016, and paragraph (1) of subdivision (d) of this section on or before June 30, 2016~~ 42281.

(2) A single-use carryout bag does not include either of the following:

(A) A bag provided by a pharmacy pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code to a customer purchasing a prescription medication.

(B) A nonhandled bag used to protect a purchased item from damaging or contaminating other purchased items when placed in a recycled paper bag or reusable grocery bag.

(g) “Store” means a retail establishment that meets any of the following requirements:

(1) A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000); or more, and ~~which~~ *that* sells a line of ~~dry-grocery groceries~~, canned goods, or nonfood items, and some perishable items.

(2) Has at least 10,000 square feet of retail space that generates sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) and has a pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code.

(3) Is a convenience food store, foodmart, or other entity that is engaged in the retail sale of a limited line of goods, generally including milk, bread, soda, and snack foods, and that holds a Type

20 or Type 21 license issued by the Department of Alcoholic Beverage Control.

~~Article 2. Carryout Bag Regulation~~

~~42281. (a) Except as provided in Section 42282, the requirements of this section apply only to a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42280.~~

~~(b) (1) On and after January 1, 2015, a store shall not provide a single-use carryout bag to a customer at the point of sale, except as provided in this section.~~

~~(2) On January 1, 2015, until June 30, 2016, a store may provide to a customer a reusable grocery bag, as defined in paragraph (1) of subdivision (d) of Section 42280.~~

~~(3) On and after July 1, 2016, a store shall only provide to a customer a reusable grocery bag, as defined in paragraph (2) of subdivision (d) of Section 42280, that meets the requirements of Section 42283.~~

~~(c) A store shall make reusable grocery bags available for purchase by a customer.~~

~~(d) Notwithstanding any other law, on and after January 1, 2015, a store shall provide a customer participating in the California Special Supplemental Food Program for Women, Infants, and Children pursuant to Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106 of the Health and Safety Code and a customer participating in the Supplemental Food Program pursuant to Chapter 10 (commencing with Section 15500) of Part 3 of Division 9 of the Welfare and Institutions Code, with a reusable grocery bag or a recycled paper bag at no cost at the point of sale.~~

~~(e) Notwithstanding subdivision (b), a store may make available for purchase at the point of sale a recycled paper bag.~~

~~(f) Notwithstanding subdivision (b), a store may make available for purchase at the point of sale a compostable bag, that, at a minimum, meets the American Society for Testing and Materials (ASTM) Standard Specification for Compostable Plastics D6400, if both of the following requirements are met in the jurisdiction where the compostable bag is sold:~~

~~(1) A majority of the residential households in the jurisdiction have access to curbside collection of foodwaste for composting.~~

~~(2) The governing authority for the jurisdiction has voted to allow stores in the jurisdiction to sell to a consumer at the point of sale a compostable bag at a cost not less than the actual cost of the bags.~~

~~42282. On and after July 1, 2016, a store, as defined in paragraph (3) of subdivision (g) of Section 42280, shall comply with the same requirements of this article that are imposed upon a store, as defined in paragraph (1) or (2) of subdivision (g) of Section 42880.~~

Article 3.2. Reusable Grocery Bags

~~42283.~~

~~42281.~~ (a) On and after July 1, 2016, a reusable grocery bag *that is sold pursuant to subdivision (c) of Section 42282* shall meet all of the following requirements:

(1) (A) Be designed and manufactured to withstand, at a minimum, 125 uses.

(B) For purposes of this paragraph, “125 uses” means the capability of carrying a minimum of 22 pounds 125 times over a distance of at least 175 feet.

(2) Is machine washable or made from a material that can be cleaned and disinfected.

(3) Have printed on the bag, or on a tag attached to the bag that is not intended to be removed, and in a manner visible to the consumer the following information:

(A) The name of the manufacturer.

~~(B) The location (country)~~ *country* where the bag was manufactured.

(C) A recycling symbol or end-of-life management instructions.

(D) The percentage of postconsumer recycled material, if any.

~~(4) It shall~~ *Does* not contain lead, cadmium, or any other heavy metal in toxic amounts. This requirement shall not affect any authority of the Department of Toxic Substances Control pursuant to Article 14 (commencing with Section 25251) of Chapter 6.5 of Division 20 of the Health and Safety Code and, notwithstanding subdivision (c) of Section 25257.1 of the Health and Safety Code, the reusable grocery bag shall not be considered as a product category already regulated or subject to regulation.

1 ~~(5) If the reusable grocery bag producer makes a claim that it~~
2 ~~is recyclable, the producer shall demonstrate compliance with the~~
3 ~~regulations adopted by the Federal Trade Commission. *Complies*~~
4 ~~*with Section 260.12 of Part 260 of Title 16 of the Code of Federal*~~
5 ~~*Regulations related to recyclable claims if the reusable grocery*~~
6 ~~*bag producer makes a claim that the reusable grocery bag is*~~
7 ~~*recyclable .*~~

8 (b) In addition to the requirements in subdivision (a), a reusable
9 grocery bag made from plastic shall meet all of the following
10 requirements:

11 (1) On and after July 1, 2017, be made from a minimum of 20
12 percent postconsumer recycled material, except as provided in
13 subdivision (d).

14 (2) In addition to the information required to be printed on the
15 bag or on a tag, pursuant to paragraph (3) of subdivision (a), all
16 of the following information shall be printed on the bag, or on a
17 tag that complies with that paragraph:

18 (A) A statement that the bag is a reusable bag and designed for
19 at least 125 uses.

20 (B) Instructions to return the bag to the store for recycling or
21 to another appropriate recycling location.

22 (c) A plastic reusable grocery bag that also meets the
23 specifications of the American Society of Testing and Materials
24 (ASTM) Standard Specification for Compostable Plastics D6400,
25 as published in September 2004, is not required to meet the
26 requirements of paragraph (1) of subdivision (b), but shall be
27 labeled in accordance with the applicable state law regarding
28 compostable plastics.

29 ~~(d) (1) If a plastic reusable grocery bag producer is unable to~~
30 ~~obtain sufficient amounts of postconsumer recycled material to~~
31 ~~comply with this article within a reporting period because of~~
32 ~~unavailability, the producer shall demonstrate to the department~~
33 ~~the actions taken by that plastic reusable grocery bag producer to~~
34 ~~find that postconsumer recycled material include the greatest~~
35 ~~amount of postconsumer recycled material possible in the reusable~~
36 ~~grocery bag even if this amount is less than required by paragraph~~
37 ~~(1) of subdivision (b) and shall indicate the percentage that is~~
38 ~~postconsumer recycled material.~~

39 ~~(2) A plastic reusable grocery bag producer making the~~
40 ~~demonstration in paragraph (1) shall make a reasonable effort to~~

1 identify available supplies of postconsumer recycled material
2 before submitting a certification containing this information to the
3 department pursuant to Section 42284.

4 (3) A plastic reusable grocery bag producer that makes a
5 demonstration pursuant to paragraph (1) shall include the greatest
6 amount of postconsumer recycled material possible in the reusable
7 grocery bag, even if this amount is less than required by paragraph
8 (1) of subdivision (b) and shall indicate the percentage that is
9 postconsumer recycled material.

10 42284. (a) On or before January 1, 2016, and on January 1
11 every two years thereafter on a schedule and in a manner
12 determined by the department, a reusable grocery bag producer
13 shall submit a certification to the department for each type of
14 reusable grocery bag that is manufactured, imported, sold, or
15 distributed in the state and provided to a store for sale or
16 distribution that meets the requirements of Section 42283.

17 (b) A reusable grocery bag producer shall submit a fee, as
18 established pursuant to subdivision (e), to the department with
19 each certification submitted.

20 (c) The department shall provide a system to submit
21 certifications online.

22 (d) On and after July 1, 2016, the department shall publish a
23 list on its Internet Web site that includes both of the following:

24 (1) The name, location, and appropriate contact information of
25 a reusable grocery bag producer that is in compliance with this
26 article.

27 (2) The reusable grocery bags that are in compliance with this
28 article.

29 (e) The department shall establish a certification fee schedule
30 that will generate fee revenues sufficient to cover all of the
31 department's costs to enforce this article. Fee revenues shall not
32 exceed the amount necessary to cover the department's reasonable
33 costs to enforce this article.

34 (f)

35 42282. (a) The department may inspect and audit a reusable
36 grocery bag producer subject to this article with all costs associated
37 with the audit being paid for by the reusable grocery bag producer.

38 (b) Upon request by the department, a reusable grocery bag
39 producer shall submit laboratory test results from independent,
40 accredited (ISO/IEC 17025) laboratories to the department

1 *validating the reusable grocery bag meets the requirements of*
2 *Section 44281 for each type of reusable grocery bag that is*
3 *manufactured, imported, sold, or distributed in the state and*
4 *provided to a store for sale or distribution.*

5 ~~(g)~~

6 (c) The department may test any reusable *grocery* bag
7 manufactured by a reusable *grocery* bag producer and provided
8 to a store for sale or distribution for compliance with this article
9 and the regulations adopted pursuant to this article.

10 ~~(h)~~

11 (d) The department may enter into an agreement with other state
12 entities that conduct inspections to provide necessary enforcement
13 of this article.

14 ~~(i)~~

15 (e) Notwithstanding Section ~~42286~~ 42285, ~~any~~ a violation of
16 this article shall be subject to an administrative civil penalty
17 assessed by the department in an amount not to exceed five hundred
18 dollars (\$500) for the first violation. A subsequent violation may
19 be subject to an increased penalty of up to five hundred dollars
20 (\$500) per violation, not to exceed five thousand dollars (\$5,000)
21 per violation.

22 ~~(j) The department shall deposit all certification fees paid~~
23 ~~pursuant to this article into the Reusable Bag Account, which is~~
24 ~~hereby created in the Integrated Waste Management Fund in the~~
25 ~~State Treasury. The moneys deposited in the Reusable Bag Account~~
26 ~~shall be expended by the department, upon appropriation by the~~
27 ~~Legislature, to assist the department with its costs of implementing~~
28 ~~this article.~~

29 ~~(k)~~

30 (f) The department shall deposit all penalties collected pursuant
31 to subdivision ~~(i)~~ (d) for a violation of this article into the ~~Penalty~~
32 ~~Subaccount~~ *Reusable Bag Account*, which is hereby created in the
33 ~~Reusable Bag Account~~ *Integrated Waste Management Fund*. The
34 moneys in the ~~Penalty Subaccount~~ *Reusable Bag Account* shall be
35 expended by the department, upon appropriation by the Legislature,
36 to assist the department with its costs of implementing this article.

37
38 *Article 3. Single-Use Carryout Bags*
39

1 42283. (a) On and after January 1, 2015, a store, as defined
2 in paragraph (1) or (2) of subdivision (g) of Section 42280, shall
3 not provide a single-use carryout bag to a customer at the point
4 of sale.

5 (b) On and after July 1, 2016, a store, as defined in paragraph
6 (3) of subdivision (g) of Section 42280, shall not provide a
7 single-use carryout bag to a customer at the point of sale.

8 (c) (1) On and after July 1, 2016, a store shall make available
9 for purchase by a customer reusable grocery bags that meet the
10 requirements of Section 42281.

11 (2) On and after July 1, 2016, a store shall not sell or distribute
12 a reusable bag at the point of sale that does not meet the
13 requirements of Section 42281.

14 (d) A store may make available for purchase at the point of sale
15 a recycled paper bag.

16 (e) Notwithstanding any other law, on and after January 1,
17 2015, a store shall provide a customer participating in the
18 California Special Supplemental Food Program for Women,
19 Infants, and Children pursuant to Article 2 (commencing with
20 Section 123275) of Chapter 1 of Part 2 of Division 106 of the
21 Health and Safety Code and a customer participating in the
22 Supplemental Food Program pursuant to Chapter 10 (commencing
23 with Section 15500) of Part 3 of Division 9 of the Welfare and
24 Institutions Code with a reusable grocery bag or a recycled paper
25 bag at no cost at the point of sale.

26 (f) Notwithstanding subdivisions (a) and (b), a store may make
27 available for purchase at the point of sale a compostable bag that,
28 at a minimum, meets the American Society for Testing and
29 Materials (ASTM) Standard Specification for Compostable Plastics
30 D6400, if, in the jurisdiction where the compostable bag is sold,
31 both of the following requirements are met:

32 (1) A majority of the residential households in the jurisdiction
33 have access to curbside collection of foodwaste for composting.

34 (2) The governing authority for the jurisdiction has voted to
35 allow stores in the jurisdiction to sell to a consumer at the point
36 of sale a compostable bag at a cost not less than the actual cost
37 of the bags.

Article 4. Reporting Requirements

~~42285.~~

42284. (a) On or before January 1, 2017, the department shall submit a report to the Legislature in accordance with Section 9795 of the Government Code, regarding the effectiveness of this chapter and recommendations for statutory changes to increase effectiveness, which shall include all of the following:

(1) A compilation of state cleanup data to evaluate pollution reduction.

(2) Recommendations to further encourage the use of reusable grocery bags by customers and stores.

(3) An evaluation of the requirements for reusable *grocery* bags specified in Section ~~42283~~ 42281.

(4) Distribution of recycled paper bags.

(5) Number and type of violations.

(b) The department shall coordinate with other state and local agencies in compiling this report to maximize existing efforts and resources in the areas of litter reduction, water quality, and environmental protection.

(c) Pursuant to Section 110231.5 of the Government Code, this section is repealed on January 1, 2018.

Article 5. Enforcement

~~42286.~~

42285. (a) A city, a county, a city and county, or the state may impose civil liability in the amount of five hundred dollars (\$500) for the first violation of this chapter, one thousand dollars (\$1,000) for the second violation, and two thousand dollars (\$2,000) for the third and subsequent violations.

(b) Any civil penalties collected pursuant to subdivision (a) shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action. The penalties collected pursuant to this section by the Attorney General may be expended by the Attorney General, upon appropriation by the Legislature, to enforce this chapter.

~~(c) This section does not apply to a violation of Article 3 (commencing with Section 42283). The remedies provided by this section shall not be exclusive and shall be in addition to the~~

- 1 *remedies that may be available pursuant to Chapter 5 (commencing*
- 2 *with Section 17200) of Part 2 of Division 7 of the Business and*
- 3 *Professions Code.*

O